

## EXPLANATORY MEMORANDUM

### The National Health Service (Complaints) Regulations 2004

#### SI 2004 No. 1768

1. This explanatory memorandum has been prepared by the Department of Health and is laid before Parliament by Command of Her Majesty.

#### 2. Description

2.1 This instrument deals with complaints to NHS bodies, foundation trusts and primary care providers. The instrument consolidates but does not change, the existing legislation in respect of the local resolution stage. The Department of Health will review local resolution arrangements, and their place within the wider complaints framework, on receipt of the Shipman Report which is expected to make recommendations around the NHS complaints procedure. The instrument changes the procedure for second tier complaints, placing responsibility for the independent stage of the NHS complaints process with the Healthcare Commission

#### 3. Matters of special interest to the House of Lords Merits Committee

3.1 None.

#### 4. Legislative Background

4.1 The instrument is being made principally in order to transfer responsibility for the second tier of the NHS complaints process to the Healthcare Commission. This is the first use of the power in section 113 of the Health and Social Care (Community Health and Standards) Act 2003.

#### 5. Extent

5.1 This instrument applies to England.

#### 6. Policy background

6.1 The current NHS complaints procedure underwent an independent evaluation during 1999-2000. The NHS Plan committed Ministers to acting on the results of the evaluation. The evaluation report, NHS Complaints Procedure National Evaluation, and a listening document, Reforming the NHS Complaints Procedure – a Listening Document, were published on 3 September 2001.

The listening exercise showed the need to change complaints handling in the NHS so that it is more independent and responsive to the needs of patients. In particular, the evaluation and listening exercise indicated that the Independent Review stage caused significant dissatisfaction for complainants, as complainants do not consider it truly

independent or impartial. The evaluation indicated that improving this aspect of the current procedure is the single most commonly cited suggestion for reform.

The Healthcare Commission will now take over responsibility for the independent review of complaints. It brings true independence to the second tier of the NHS complaints procedure - in addition to that already provided by the Ombudsman. This change addresses the major criticism about lack of independence.

## **7. Impact**

7.1 A Regulatory Impact Assessment has not been prepared for this instrument as it has no impact on business, charities or voluntary bodies.

7.2 The impact on the public sector is to transfer responsibility of the second tier of the complaints function from the NHS to the Healthcare Commission.

## **8. Contact**

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